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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JEREMIAH LOUCKS,

Plaintiff and Respondent,

v.

HARVEY BARRY JACOBS,

Defendant and Appellant.

D073422

(Super. Ct. No. GIC747164)

APPEAL from a postjudgment order of the Superior Court of San Diego County,
Lisa Schall, Judge. Affirmed.

Harvey Barry Jacobs, in pro. per., for Defendant and Appellant.

Law Office of Marc O. Stern and Marc O. Stern, for Plaintiff and Respondent.

I

INTRODUCTION

Harvey Barry Jacobs appeals from a postjudgment order denying his motion to vacate an order granting Jeremiah Loucks's ex parte application for the nunc pro tunc renewal of a judgment Loucks obtained against Jacobs. We affirm the order as we

conclude Jacobs's motion to vacate was untimely and, even if it had been timely, it lacked merit.

II

BACKGROUND

Jacobs murdered his wife. His wife's sons, Loucks and his brother, filed a wrongful death action against Jacobs. However, because Loucks's brother had been adopted by other parents, Loucks's brother lacked standing to pursue the action. In January 2005, Loucks obtained a wrongful death judgment against Jacobs for \$7.5 million.

On December 11, 2014, Loucks filed an application for renewal of judgment. Instead of naming Loucks as the applicant, Loucks's counsel mistakenly inserted the case title, which began with Loucks's brother's name, as the applicant.

Sometime before March 19, 2015, Jacobs submitted a document to the superior court entitled "Objection to Application for Renewal of Judgment and Motion to Vacate Renewal of Judgment." On March 19, 2015, the court returned the document to him with a notice stating the court was unable to process the document because: (1) the application for renewal of judgment had not yet been processed due to an enormous backlog; (2) the application may contain errors that would have to be corrected before it could be processed; and (3) Jacobs had to pay a motion fee or request a fee waiver.

Sometime before April 13, 2015, Jacobs submitted a document to the superior court entitled "Objections to Application For Renewal of Judgment and Motion to Vacate Renewal of Judgment; Request for Waiver of Court Fees." On April 13, 2015, the court

returned the document to him with a notice stating the court was unable to process the document because Jacobs had to contact the department to which the case was assigned to obtain a motion hearing date.

On May 1, 2015, the court clerk renewed the judgment, effective December 11, 2014. On July 1, 2015, the court set aside the renewed judgment under Code of Civil Procedure section 128, subdivision (a)(8).¹ On July 7, 2015, the court clerk served Jacobs and Loucks's counsel with a copy of the order setting aside the renewed judgment.

On August 5, 2015, Loucks filed an ex parte application for renewal of judgment nunc pro tunc. Loucks argued the mistake in identifying the applicant in the original application for renewal of judgment was the result of excusable neglect, which the court had the inherent power to correct. On August 6, 2015, the court granted the ex parte application and directed the court clerk to issue a notice of renewal of judgment in the amount of \$14,901,399.86.

On August 11, 2015, the court clerk issued the notice of the renewal of judgment. Among its provisions, the notice informed Jacobs: "1. This renewal extends the period of enforceability of the judgment until 10 years from the date the application for renewal was filed. [¶] 2. If you object to this renewal, you may make a motion to vacate or modify the renewal with this court. [¶] 3. You must make this motion within 30 days

¹ Code of Civil Procedure section 128, subdivision (a)(8), provides: "Every court shall have the power to ... [¶] ... amend and control its process and orders so as to make them conform to law and justice."

after service of this notice on you." On September 30, 2015, Loucks served Jacobs with the notice of the renewal of judgment.

On March 7, 2016, Jacobs filed a "Praecipe." The document demanded the court vacate the order granting the ex parte application.²

Sometime before August 10, 2016, Jacobs submitted a document to the superior court entitled "Writ of Error Quea Coram Nobis Residant."³ On August 10, 2016, the court returned the document to Jacobs with a notice stating the court was unable to process the document because a new fee waiver must be submitted before filing an additional petition on a closed file.

On August 22, 2016, Jacobs filed a petition for writ of error *coram nobis* in this court. We summarily denied the petition on August 25, 2016.

On September 2, 2016, Jacobs filed a belated notice of appeal. We dismissed the appeal on October 19, 2016 and issued the remittitur on December 22, 2016.

On February 9, 2017, Jacobs filed a "Motion to Set Aside Void Judgment." On April 21, 2017, Jacobs filed a "Motion for Court Action" requesting the court rule on his "Motion to Set Aside Void Judgment."

On August 23, 2017, Jacobs sent Loucks a notice of hearing on the "Motion to Set Aside Void Judgment." Jacobs did not, however, send the motion or any points and

² A "praecipe" is a common law writ "ordering a defendant to do some act or to explain why inaction is appropriate." (Black's Law Dict. (10th ed. 2014) p. 1362, col. 2.)

³ A "writ of error *coram nobis*" is a common law writ "directed to a court for review of its own judgment and predicated on alleged errors of fact." (Black's Law Dict. (10th ed. 2014) p. 412, col. 2; *People v. Kim* (2009) 45 Cal.4th 1078, 1092.)

authorities with the notice. The court subsequently continued the hearing on the motion from October 13, 2017 to December 1, 2017. On November 16, 2017, Loucks filed an opposition to the motion.

On December 1, 2017, the court denied the "Motion to Set Aside Void Judgment" with prejudice and advised Jacobs any future filings would result in sanctions. On December 27, 2017, Jacobs appealed from the order denying the "Motion to Set Aside Void Judgment."⁴

III

DISCUSSION

A

"Under the Enforcement of Judgments Law, a money judgment is enforceable for a 10-year period following the date of entry. [Citation.] The judgment creditor may renew the judgment by filing an application for renewal with the clerk of the court prior to the end of the 10-year period. [Citation.] The renewal 'does not create a new judgment or modify the present judgment,' but merely extends the enforceability of the judgment—in effect, it resets the 10-year enforcement clock. [Citation.] Once a

⁴ We asked the parties to address the appealability of the court's order in their briefs. As Loucks points out in his brief, the order is appealable. (*Jonathan Neil & Associates, Inc. v. Jones* (2006) 138 Cal.App.4th 1481, 1487.) The "order involves an adjudication of 'any ground [asserted by the judgment debtor] that would be a defense to an action on the judgment ... ' ([Code Civ. Proc.,] § 683.170, subd. (a).) Because a renewal can only be sought after entry of 'a money judgment or a judgment for possession or sale of property' ([Code Civ. Proc.,] § 683.110, subd. (a)), an order denying a motion to vacate the renewal necessarily is 'an order made after a judgment made appealable by paragraph (1)' of section 904.1, subdivision (a), expressly made appealable by section 904.1, subdivision (a)(2)." (*Jonathan Neil & Associates*, at p. 1487.)

judgment has been renewed, a new application for renewal may not be submitted within five years of the previous renewal. [Citation.] Although entry of the renewed judgment is a ministerial act accomplished by the clerk of the court [citations], the judgment [debtor] may challenge the renewal by filing a motion to vacate or modify the renewed judgment [citation]." (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2008) 168 Cal.App.4th 185, 191, fn. omitted (*OCM Principal*).)

A renewal of judgment "may be vacated on any ground that would be a defense to an action on the judgment." (Code Civ. Proc., § 683.170, subd. (a).) A judgment debtor may apply for an order vacating the renewal of judgment "[n]ot later than 30 days after service of the notice of renewal." (Code Civ. Proc., § 683.170, subd. (b).)

"The judgment debtor bears the burden of proving, by a preponderance of the evidence, that he or she is entitled to relief under [Code of Civil Procedure] section 683.170. [Citations.] On appeal, we examine the evidence in a light most favorable to the order under review and the trial court's ruling for an abuse of discretion. [Citation.]" (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 199.)

B

In this case, the record shows Loucks served Jacobs with the notice of renewal on September 30, 2015, and Jacobs did not attempt to obtain an order vacating the renewal of judgment until, at the earliest, March 7, 2016, when he filed his "Praeceptum." As this attempt and every subsequent attempt occurred more than 30 days after Loucks served Jacobs with the notice of renewal, the attempts were all untimely. (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 261 (*Goldman*).) If a motion to vacate is not timely made,

the judgment remains enforceable in the amount stated in the notice of entry of renewal. (See Cal. Law Revision Com. com., 16B West's Ann. Code Civ. Proc. (2009 ed.) foll. § 683.170, p. 172.)⁵

C

Even if Jacobs had made a timely attempt to obtain an order vacating the renewal of judgment, his arguments in favor of such an order lack merit. Specifically, he contends the court could not renew the judgment because it did not have jurisdiction over the subject matter or the parties. But, "[j]urisdiction of the court over the parties and the subject matter of an action continues throughout subsequent proceedings in the action." (Code Civ. Proc., § 410.50, subd. (b).) The statutory renewal process is a subsequent proceeding. Accordingly, the court that entered the judgment in an action has continuing jurisdiction over the subject matter and the parties throughout the statutory renewal process and a renewal is not subject to attack for lack of such jurisdiction at the time of renewal. (See *Goldman*, *supra*, 160 Cal.App.4th at pp. 263–264; Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) ¶ 6:75.5, pp. 47–48.)

Jacobs also contends the court did not have the power to grant Loucks's ex parte application. However, the court generally has the power to allow the correction of an error in a party's name nunc pro tunc. (Code Civ. Proc., § 473, subd. (a) ["The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any

⁵ "Because the Legislature enacted the Enforcement of Judgments Law in 1982 upon the California Law Revision Commission's recommendation [citation], we may also consult the commission's comments on the relevant statutory provisions [citation]." (*OCM Principal*, *supra*, 168 Cal.App.4th at p. 192.)

pleading or proceeding ... by correcting a mistake in the name of a party"]; see *Ford v. Looney* (1959) 169 Cal.App.2d 503, 508.) In addition, if the court had granted Jacobs's motion to vacate the renewal because of the error in the applicant's name, the court could have remedied the error by ordering the entry of another and different renewal with the correct applicant's name. (Code Civ. Proc. § 683.170, subd. (c) ["Upon the hearing of the motion, the renewal may be ordered vacated ... and another and different renewal may be entered"].)

Finally, Jacobs contends Loucks's ex parte application for renewal of judgment was barred by estoppel by laches. This contention is based in part on documents not included in the record. " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' [Citation.]" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.)

Moreover, the record indicates Loucks filed the ex parte application within a month after the court set aside the original renewal of judgment. Jacobs has not established either unreasonable delay or the other requirements for estoppel by laches. (*Pease v. Zapf* (2018) 26 Cal.App.5th 293, 301 [the defense of laches requires the defendant to show unreasonable delay and either acquiescence in the matter or prejudice to the defendant from the delay]; *Tustin Community Hospital, Inc. v. Santa Ana Community Hospital Assn.* (1979) 89 Cal.App.3d 889, 896 ["estoppel by laches is that type or degree of delay or inattention to duty which, when weighed with all other equitable considerations, results in a bar to relief"]; *Anderson v. Broadwell* (1931) 119 Cal.App. 130, 142 [to establish estoppel by laches, the appellant must show lapse of an

unreasonable time, respondent's knowledge of the facts, and resulting prejudice to appellant].)

IV

DISPOSITION

The order is affirmed. Loucks is awarded his appeal costs.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

AARON, J.